IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE Nos 3 to 15 of 1986
and
GIFT TAX REFERENCE No 25 of 1987
(14 MATTERS)

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KARTIKEYA V SARABHAI

Versus

COMMISSIONER OF GIFT TAX

Appearance:
1. GIFT TAX REFERENCE No. 3 of 1986
MR KC PATEL for Petitioner No. 1-5
MR MR BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 06/09/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In these references made at the instance of the assessee as well as at the instance of the revenue, the following common questions are referred to us for our opinion in respect of assessment year 1976-77 (GTR Nos. 3 to 14 of 1986) and 1977-78 (GTR Nos. 15/86 and 25/87):-

At the instance of the assessee :

(1) Whether, on the facts and in the circumstances of the case, exercise of power of appointment by the assessee was a transfer of the assessee's interest in the property under Section 2(xxiv)(c) of the Gift-tax Act making the assessee liable to tax under the Gift-tax Act ?

(2) If the answer to question No. 1 is in the affirmative whether the assessee by exercising the power of appointment regarding his interest in the property and naming the persons to whom the trustees of the original trust should transfer the property at a future date became liable to gift-tax in this assessment year ?

(3) Whether the expression "in such manner" in clause (1)(iii) of the Trust Deed did not empower the trustees to make a direct transfer of appointee trusts. If it did so empower, whether there had been such a direct transfer for which no tax is leviable as it had already been paid at the time of the first transfer ?

At the instance of the revenue :

(4) Whether, the Appellate Tribunal has been right in law in holding that the GTO was not justified in levying gift tax on the value of the entire corpus on the ground that it was only the assessee's interest in the property which was transferred and it was that which was required to be considered for the purpose of gift-tax ?

2. We have heard Mr RK Patel, learned counsel for the assessees and Mr MR Bhatt, learned counsel for the revenue. Both the learned counsel state that the

questions raised herein are already decided by this Court in the judgment dated 4.9.2001 in Gift Tax Reference No. 2 of 1986.

3. Since the facts of all these references are similar to the facts of Gift Tax Reference No. 2 of 1986 and the same questions are raised herein, following the aforesaid judgment dated 4.9.2001 in Gift Tax Reference No. 2 of 1986, we answer the questions as under :-

Question No. 1 is answered in the affirmative i.e. in favour of the revenue and against the assessee.

Question No. 2 is also answered in the affirmative i.e. in favour of the revenue and against the assessee.

Question No. 3 is answered in the negative i.e. in favour of the revenue and against the assessee.

Question No. 4 at the instance of the revenue is answered in the affirmative i.e. in favour of the assessee and against the revenue.

The references accordingly stand disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-